

Internal Revenue Service

Department of the Treasury
Washington, DC 20224

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Person To Contact:
, ID No.

Telephone Number:

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PLR-101793-20

Date:
December 21, 2020

TY:

Legend

Taxpayer =
Foreign Company =
Country =
Tax Year =
Date 1 =
Date 2 =
Date 3 =
Date 4 =
Date 5 =
Date 6 =
Member A =
Member B =
Accountants =

Dear :

This is in response to a letter dated December 10, 2019, and additional correspondence dated February 17, 2020, submitted on Taxpayer's behalf by an authorized representative, requesting the consent of the Commissioner of the Internal Revenue Service ("Commissioner") to make a retroactive qualified electing fund ("QEF") election under section 1295(b) of the Internal Revenue Code (the "Code") and Treas. Reg. § 1.1295-3(f) with respect to Taxpayer's investment in Foreign Company.

The ruling contained in this letter is based upon information and representations submitted by Taxpayer and accompanied by penalty of perjury statements executed by an appropriate party. While this office has not verified any of the material submitted in support of the request for rulings, it is subject to verification on examination.

FACTS

On Date 1, Taxpayer, a domestic limited liability company taxed as a partnership, acquired an interest of less than 10 percent in Foreign Company, a company organized in Country.

Taxpayer engaged Accountants to prepare its Form 1065 for Tax Year, which was due on Date 2. Accountants filed Taxpayer's Form 1065 before its due date, on Date 3. On Date 4 (after Date 2 and Date 3), Foreign Company's tax preparer informed Member A, a member of Taxpayer, that Foreign Company had become a passive foreign investment company ("PFIC") in Tax Year. Member A, who is not a tax professional, notified Member B, another member of Taxpayer, about the information he had received from Foreign Company's tax preparer. On Date 5, Member B informed Accountants that Foreign Company had become a PFIC in Tax Year.

Taxpayer submitted affidavits, under penalties of perjury, describing the events that led to the failure to make the QEF election by the election due date. Taxpayer has agreed to file amended returns for each of the subsequent taxable years affected by the retroactive election, if any. Taxpayer represents that, as of the date of the request for ruling, the PFIC status of Foreign Company had not been raised by the IRS on audit for any of the taxable years at issue.

RULING REQUESTED

Taxpayer requests the consent of the Commissioner to make a retroactive QEF election under Treas. Reg. § 1.1295-3(f) for the tax year ending on Date 6.

LAW

Section 1295(a) provides that a PFIC will be treated as a QEF with respect to a shareholder if (1) an election by the shareholder under section 1295(b) applies to the PFIC for the taxable year; and (2) the PFIC complies with the requirements prescribed by the Secretary for purposes of determining the ordinary earnings and net capital gains of the company.

Under section 1295(b)(2), a QEF election may be made for a taxable year at any time on or before the due date (determined with regard to extensions) for filing the return for the taxable year. To the extent provided in regulations, the election may be made after the due date if the shareholder failed to make the election by the due date because the shareholder reasonably believed the company was not a PFIC.

Under Treas. Reg. § 1.1295-3(f), a shareholder may request the consent of the Commissioner to make a retroactive QEF election for a taxable year if:

1. the shareholder reasonably relied on a qualified tax professional, within the meaning of Treas. Reg. § 1.1295-3(f)(2);
2. granting consent will not prejudice the interests of the United States government, as provided in Treas. Reg. § 1.1295-3(f)(3);
3. the request is made before a representative of the Internal Revenue Service raises upon audit the PFIC status of the company for any taxable year of the shareholder; and
4. the shareholder satisfies the procedural requirements of Treas. Reg. § 1.1295-3(f)(4).

The procedural requirements include filing a request for consent to make a retroactive election with, and submitting a user fee to, the Office of the Associate Chief Counsel (International). Treas. Reg. § 1.1295-3(f)(4)(i). Additionally, affidavits signed under penalties of perjury must be submitted that describe:

1. the events that led to the failure to make a QEF election by the election due date;
2. the discovery of the failure;
3. the engagement and responsibilities of the qualified tax professional; and
4. the extent to which the shareholder relied on the professional.

Treas. Reg. § 1.1295-3(f)(4)(ii) and (iii).

CONCLUSION

Based on the information submitted and representations made with Taxpayer's ruling request, we conclude that Taxpayer has satisfied Treas. Reg. § 1.1295-3(f). Accordingly, we grant consent to Taxpayer to make a QEF election with respect to Foreign Company retroactive to the tax year ending on Date 6, provided that Taxpayer complies with the rules under Treas. Reg. § 1.1295-3(g) regarding the time for, and manner of, making the retroactive election.

Except as expressly provided herein, no opinion is expressed or implied concerning the tax consequences of any aspect of any transaction or item discussed or referenced in this letter.

This ruling is directed only to the taxpayer requesting it. Section 6110(k)(3) of the Code provides that it may not be used or cited as precedent.

In accordance with the Power of Attorney on file with this office, a copy of this letter is being sent to your authorized representative.

A copy of this letter must be attached to any income tax return to which it is relevant. Alternatively, taxpayers filing their returns electronically may satisfy this requirement by

attaching a statement to their return that provides the date and control number of the letter ruling.

Sincerely,

/s/ Kristine A. Crabtree

Kristine A. Crabtree
Senior Technical Reviewer, Branch 2
(International)

cc: